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Offenders and victims: accountability and fairness in the justice process

Offenders and victims: accountability and fairness in the criminal justice process

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I. Background

1. Ever since the advent of modern democracies, criminal justice systems have had the dual function of holding offenders accountable to society for their misdeeds and holding the criminal authorities accountable for their punitive actions against the offender. A balance must be struck between crime control and due process.

2. In the rehabilitation model, which prevailed in many countries during the third quarter of the twentieth century, the interests of the community in successful treatment of the offender had to be reconciled with the rights of the offender. The prospects of rehabilitation rather than the accountability of the offender determined the length of sentences. Sentences of indeterminate length tended to be rather harsh and were subsequently criticized as infringements of the offender's rights. That criticism led to a greater emphasis in sentencing on the offender's accountability or just deserts. In recent years the accountability of the offender has again become a central consideration in sentencing, even in the case of juvenile delinquents. At the same time, the sentencing discretion of the courts has been reduced. This new retributivist model seems in line with the individualistic culture of the prevailing market economies. In practice the new approach to sentencing has contributed to a substantial increase in the prison population in many countries, which has caused overcrowding in prisons and forced Governments to increase expenditure on prison services.

3. The new sentencing philosophy has not in any way lessened the importance of the rights of the offender, including the right to due process, however. Over the years the accountability of the authorities has in fact been extended and refined, in parallel with the democratization of state institutions in general. Due process safeguards have been extended by tightening the rules concerning the admissibility of evidence. Defendants have extended rights of appeal to higher, in some cases even international, courts. In many countries, police and prosecution are not only accountable to the law and the courts, but they also operate under the supervision of democratically elected institutions. Offenders can seek remedy for assumed misbehaviour of criminal justice authorities through statutorily based police complaints boards, prison appeal boards or prison or general ombudsmen. A new, dynamic balance has been found between the two traditional

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functions of the criminal justice system, controlling crime and controlling the controllers.

The victim as third party

4. During the last quarter of the twentieth century, the victim has been seen mainly as third party in the criminal process. Victimological research demonstrated that many victims were dissatisfied with their treatment by the system. According to the International Crime Victims Survey more than half of crime victims across the world are dissatisfied with the way the police dealt with their complaint.[1] In many cases victims are severely traumatized by their treatment by the criminal justice system, resulting in so-called "secondary" victimization.

5. It is now generally recognized that the criminal justice process must not only be fair to the defendants/offenders, but also to the victims of crime. A landmark for this new development was the adoption by the General Assembly in 1985 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex). In many countries new legal provisions were introduced to advance the interests of victims, although the implementation of those new rights is not always immediately ensured.

6. There are different views about how the rights of victims relate to the more established rights of offenders. According to one view, victim's rights have a negative impact upon the enforcement of the rights of the defendant. Others see no intrinsic conflict between the interests of offenders and those of victims. The Declaration of Basic Principles indicates that the participation of the victim in the proceedings is guaranteed in so far as it does not prejudice the rights of the defendant. Some options might even serve the interests of both parties.

7. Conflicts may also arise between the interests of the community as represented by the prosecution and those of the individual victim, for example, if the latter is unwilling to testify in a public court because of the sensitive nature of the crime. The imposition of a fine on the offender rather than compensation to the victim might also be construed as a conflict of interest between the State and the victim. In some cases the victim might even be opposed to prosecution because a satisfactory settlement has been reached with the offender. The prosecutor may have reasons to persist in a prosecution in the general interest, regardless of the victim's wishes.

8. Criminal provisions must not only govern the relationships between State and defendant, but also those between offender and victim and between State and victim. At the present time criminal justice systems are faced with the difficult tasks of seeking to achieve a balance between the legitimate interests of three parties, the community, the offender and the victim. The model of restorative justice has recently been presented as a possible alternative, which may help to find the desired balance between the interests of all parties concerned. That model can look back to a long tradition in customary law in many different parts of the world. It seems therefore of particular interest for an international forum.

9. In addition to the community, the offender and the victim, there is often a fourth party involved, the media, which claim to serve the community but often have additional interests and obligations of a partisan nature, whether to a political party, to shareholders or to advertisers. The situation becomes even more complex when the crime involves terrorism. What distinguishes acts of terrorism from other violence is that the relationship between the terrorist offender and his (rarely her) victim(s) is an instrumental one. The victim is often only "the skin on a drum beaten to reach a wider audience", as one author put it.[2] The wider audience—which might include the public, the Government, international public opinion, a rival political movement and the families of hostages and kidnapping victims—is generally the main target of terrorists. In this triangle of terrorism—terrorist, victim, target audience—the perpetrator selects a victim such as a member of the Government, if the terror is focused, or a member of the public at large in the case of indiscriminate terror. Mass reporting of repeated terrorist victimization subsequently affects the final target group, which experiences feelings of terror towards the person or group perpetrating the terrorist act. Such use of violence as communication to intimidate media audiences has enlarged the scope of indirect victims.

II. Basic principles of justice for offenders and victims

10. The legal rights of defendants and victims, which are essential to ensure the rule of law in criminal justice, are dealt with in the document entitled "Promoting the rule of law and strengthening the criminal justice system" (A/CONF.187/3). Here both sets of rights will be reviewed in order to identify possible conflicts of interest.

A. Fairness for the offender

11. The general public in many countries is extremely sensitive about both the perceived and actual threat of crime. At the same time, public opinion is also sensitive about perceived or actual miscarriages of justice. The criminal justice process can therefore be seen as the litmus test of the quality of the relationship between the State and individual citizens.

12. Although criminal justice systems show considerable variation in the provision of rights to offenders, many now share the following elements of procedural fairness:

(a) The right not to be subject to arbitrary arrest, detention, search or seizure;

(b) The right to know the nature of the charges and evidence;

(c) The right to counsel;

(d) The presumption of innocence;

(e) The standard of proof (beyond a reasonable doubt);

(f) The right to a public trial by an independent court;

(g) The right to test the prosecution evidence (e.g. cross-examine witnesses);

(h) The right to give and call evidence;

(i) The right to appeal.

13. The rights of offenders are guaranteed in the constitutions of many countries as well as in international law. The Commission on Crime Prevention and Criminal Justice has played an important role in the codification of those rights in its collection of standards and norms.[3] The annex to the present paper includes a list of instruments concerning the rights of the offender that have gained international approval. The list is included here so that comparisons can be made with the less known rights of victims discussed below.

B. Fairness for the victim

14. In some systems of criminal law, such as the Islamic system, the victim and his or her family have traditionally played a central role in criminal proceedings. In other systems, the rights of victims were marginal and have been extended only in recent years. The internationally accepted basic elements of fairness for victims can be found in the Declaration of Basic Principles and include the following:

(a) The right to be treated with respect and recognition;

(b) The right to be referred to adequate support services;

(c) The right to receive information about the progress of the case;

(d) The right to be present and to be involved in the decision-making process;

(e) The right to counsel;

(f) The right to protection of physical safety and privacy;

(g) The right of compensation, from both the offender and the State;

15. Criminal justice systems in most countries have only recently begun to introduce rights for victims. As with other standards and norms, most countries are still far removed from full implementation of the basic principle.[4] State compensation schemes in many countries have been found to operate bureaucratically and with considerable delays. An example of how such a situation may be remedied is the state compensation scheme in New South Wales, Australia, which was recently replaced by a system of victim services vouchers, to be handed out by the police. In many jurisdictions police officers and prosecutors often fail to comply with their statutory or administrative duties with regard to victims. Victims are still often treated with disrespect and not informed about the case and their interests are often not taken into account in essential decisions. In only a few instances is free legal counsel made available to victims of crime.

16. Unlike infringements on the rights of offenders, the failure to respect the rights of victims does not jeopardize the success of the prosecution. Infringements of the rights of victims do not result in inadmissibility of evidence or acquittals. Criminal procedure as such does not provide a built-in system of sanctions for non-enforcement of the rights of victims and there are few if any legal safeguards for those rights. For that reason, victim advocates in the United States of America have started a campaign to amend the federal constitution by adding an article on the right of victims to be present and heard at all crucial stages of criminal proceedings.[5] In other countries victim support groups have argued that generally formulated consti-

tutional human rights, such as the right to privacy, apply also to crime victims.

17. It would be possible to make police and prosecution accountable to an independent institution such as an ombudsman for failure to comply with victim-oriented laws or instructions. Governments could be made liable under administrative or civil law for failure to enforce the rights of victims. In the Netherlands, the prosecution department is liable to pay civil damages to victims if the prosecutor has failed to inform the victim, in his capacity as *partie civile*, about the occurrence of the trial. In the majority of Member States, however, accountability for enforcing the rights of victims within the justice process is still ill defined. Most countries still have a long way to go with the implementation of basic principles of fairness for victims of crime. As a follow up to the Declaration of Basic Principles, the Centre for International Crime Prevention has published a guide for policy makers on the implementation of the Declaration of Basic Principles and a handbook on justice for victims on the use and application of the Declaration of Basic Principles, adopted by the Commission on Crime Prevention and Criminal Justice. Up-to-date information on victimological best practices is made available also on a specific World Wide Web site, at http://www.victimology.nl

18. The Declaration of Basic Principles includes a section on the rights of victims of abuse of power. That section has acquired a new significance in the light of recent developments in international criminal law. The rules of procedure and evidence of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 provide some measures for the protection of victims and witnesses, including the option of video camera proceedings and other protective measures. A special Witness Assistance Unit has been set up at the Tribunal in The Hague. By and large the procedures conform to the adversarial model, which limits the opportunities for protection of the victims/witnesses.[6] The Rome Statute of the International Criminal Court (see A/CONF.183/9) also envisages special provisions for victims/witnesses. Procedural rules for victims and witnesses need still to be drawn up. Draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law have been prepared by a Special Rapporteur (E/CN.4/1997/104, appendix) and deserve close scrutiny by the international criminal justice community.

19. The draft United Nations Convention against Transnational Organized Crime and the protocols thereto, addressing illicit manufacturing of and trafficking in firearms, illegal trafficking in and transport of migrants and international trafficking in human beings, especially women and children, also include provisions on the protection of and support for witnesses and victims. The draft Convention and protocols will be submitted for adoption in 2000 (for more information, see http://www.uncjin.org).

C. Conflicts of interest between offenders and victims

20. It is stipulated in the Declaration of Basic Principles, as well as in many national proposals, such as the constitutional amendment mentioned above, that victim's rights may not compromise the right of the offender to a fair trial. It is not clear, however, where rights of victims do impinge upon those of offenders. Since the rights of victims are a new issue, it seems useful to examine whether and how they conflict or interfere with the older and more established rights of the defendant/offender.

21. Looking at the rights of victims as a whole, the right to counsel seems the logical complement of the defendant's right to counsel. There is no zero-sum game between those two rights. The victim's right to be treated with respect seems to have little if any negative implications for the offender. One argument used against instructions for a more respectful and considerate treatment of victims by police officers and prosecutors is that this might infringe on the assumption of innocence of the offender. In the past police officers sometimes tended to treat all citizens as potential suspects. It is hard to understand, however, how the real interests of the defendant would be harmed by better treatment of victims by the authorities.

22. More problematic is a decision of the United States Supreme Court not to reopen rape cases on the ground of insufficiencies in the defence because this would inflict

new trauma upon the victim.[4] In a more general sense, consideration for the risk of secondary victimization may lead courts to limit opportunities for the defence, especially in rape cases and cases with child victims. In many jurisdictions video screening of testimonies of victims/ witnesses has been introduced with special arrangements for the defence. Arrangements for anonymous testimony are sometimes made for victims/ witnesses who have reason to fear retaliation from the defendant. Opinions as to the constitutionality of such arrangements differ.

23. The victim's right to receive information seems to be the natural equivalent of the offender's right to know his charges and fairly harmless from the defendant's perspective. Problems can arise, though, if information is given about the defendant that is subsequently used by the victim to denounce the offender publicly. Detailed information about the defendant could in some cases infringe on the defendant's right to privacy.

24. By far the most controversial right of the victim is his or her right to be present at all crucial stages of the proceedings and to be involved in decision-making. There seems to be consensus that victims ought to get a chance to relate the emotional impact of the crime as well as the damages incurred to the relevant authorities. In many jurisdictions victims do have the right to initiate criminal proceedings if the prosecutors refrain from prosecution. There is no consensus, however, on the question of whether victims or family members should have the right to be involved in the sentencing process by addressing the judge or jury.[7]

25. No agreement exists as to the desirability of giving victims the right to a decisive or even final say in decisions on pre-trial detention, plea bargaining, sentencing or parole. Such a right would seem to conflict directly with the interests of the defendant/offender. Another argument against such a right is that it may pose a burden on the victim and expose him or her to undue influence or retaliation from the side of the defendant. If the victim is consulted about the offender's release from pre-trial detention, the victim's right to physical safety may be at stake. In such cases there may be a conflict between one of the victim's rights and the basic right of the offender not to be unnecessarily detained prior to a conviction.

26. The right to compensation from the State does not compromise any of the defendant's rights. In part for this reason, the right to compensation has met with little resistance from criminal authorities and has in many countries been introduced as the first state provision on behalf of victims of crime. State compensation does not lie well with the current emphasis on the accountability of the offender, however. According to research, many victims would rather receive compensation from the offender. Offender compensation—or restitution—has obvious negative implications for the offender. Most offenders have a very limited earning capacity and cannot afford to pay out large sums. However, it may be in the interest of the offender to pay at least a modest amount of compensation. If the payment of compensation is ordered instead of imprisonment or a fine, a situation could well arise that benefited both victim and offender. Offender compensation offers a straightforward way to hold the offender accountable for his or her misdeeds while also serving the financial and moral interests of the victim.

D. The victim versus the State

27. The involvement of the victim in the court proceedings will normally strengthen the position of the prosecution. This is clearly the case if the victim acts as assistant prosecutor—an option in many central and eastern European jurisdictions—or presents a written or oral victim impact statement to the court. In the balance between the rights of the offender and interests of the community, the appearance of the victim as third party will probably shift the point of gravity somewhat towards the State. In some cases the interests of the victim and those of the State do not coincide and serious conflicts can arise. A victim may be opposed to a decision by the prosecutor to dismiss a case for lack of evidence or for reasons of expediency. In most jurisdictions victims have the right to initiate private prosecutions or to ask for a review of the dismissal by the court. Such a provision provides an important mechanism for correcting unfair dismissals, such as dismissals based on undue influence by politicians or corruption.

28. Victims may also be opposed to the decision to prosecute. Traditionally certain types of crime, such as violence between family members, can only be prosecuted if an official complaint is filed by the victim and/or with his or her written consent. Some advocates of more victim-oriented procedures have argued for a general right of victims to veto prosecutions. Such a right would certainly increase the victim's control over the handling of the case. The disadvantage here is that victims would be exposed to pressure from the defendant to veto prosecution. As the

experience with domestic violence in some countries has demonstrated, that risk is far from illusory. Even without such rights victims/witnesses are frequently intimidated by defendants. For these reasons, some victims' organizations are strongly opposed to the introduction of such rights and argue for the right of victims not to be burdened with any responsibility for decisions regarding prosecution.

E. The alternative of restorative justice

29. Restorative justice is regarded as an alternative model of criminal justice. It is defined as a unique response to crime, to be distinguished from both the rehabilitative and retributive (just deserts) responses. It assumes a process "whereby all parties with a stake in a specific offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future".[8] Concrete examples are family group conferences in New Zealand whereby (usually) the juvenile offender and his or her family get together with the victim and his or her family in a relatively informal meeting to discuss the offence and the appropriate responses. Offenders are supposed to repair the damage caused to the victim, for example, by paying compensation. If necessary, the offender's family will share responsibility for the offence and assist the offender with the payment of reparation. Plans are also made about how repeat offending can be prevented in the interest of the local community.

30. The emphasis in this model is on reparation and prevention rather than on the infliction of punishment. It has been said that restorative justice and other forms of informal or semi-formal dispute resolution reflect the current trends of individualism and reduction of state functions. Closely related are other initiatives to mobilize the local community in addressing crime problems, such as community empowerment policing and community-based crime prevention. It is claimed that the model offers victims more control over the decision-making mechanism than traditional procedure—even where their participation is fully endorsed—whereas the interests of defendants can also be better served because less painful sanctions are imposed. The community might also benefit from lower recidivism and more preventive action generally.

31. So far, experiments with the new model have largely been restricted to juvenile delinquency and minor crimes. Evaluation research shows that both victims and offenders are in most cases reasonably satisfied with the results of the proceedings.[9] Critics have questioned, though, whether due process for offenders is sufficiently guaranteed. Undue influence may also be exerted upon the victims, especially with crimes involving power relations between the offender and the victim.

32. The model may be appealing for Governments as a cost-saving device and in particular as a means to reduce prison populations. Such favourable side-effects can only be achieved on a significant level, however, if the model is extended to more serious forms of crime. It remains to be seen whether the model can also be successfully applied to such crimes, as will be discussed below. In a more general sense, the success of the trend towards informal solutions ultimately depends on the strength and commitment of local communities. In most urban environments these conditions cannot be taken for granted.

III. The challenge of transnational and organized crime

A. Problems of visibility

33. Most forms of organized crime cause great harm to society or groups of citizens but not necessarily to individual persons. Trafficking in illegal goods such as drugs and many forms of racketeering and fraud against the State belong to the category of "victimless crimes". Large-scale consumer fraud, inflated prices, inadequate products and machines, contravention of labour safety regulations, environmental pollution and other illegal acts by international corporations may victimize large groups of individuals who are not even aware of their victimization. Vast segments of the population, especially in developing countries, fall victim to such criminal practices. In the case of insider trading, hundreds of thousands of stockholders across the world are financially affected.

34. Environmental crime, in particular, makes victims hard to identify. Future generations are sometimes the main victims of such acts. Corruption increases the costs of services for those individuals willing to pay. Proportionally the poorer segments of the population tend to suffer most. The general taxpayer carries the bill if corporate payments are made to government officials. After a crackdown on corruption, substantially lower costs for public works have been documented in several instances. In developing countries society at large is victimized because rampant corruption deters foreign

investment and acts as a hidden brake on development. The lack of easily identifiable victims can result in passivity on the part of law enforcement and prosecution agencies, so the necessary momentum behind the investigation of organized crime and corruption must be generated by democratically controlled state agencies.

B. Problems of distance

35. One of the most challenging questions concerning criminal procedures is how criminal justice systems can respond to growing transnational crime. The issues involved are complex because the mobility of both victims and offenders is increasing steadily, commodities and knowledge can be moved with great ease, offences can be committed in more than one country and victims can include citizens from different countries, as in the case of computer crimes.

36. Lack of knowledge of local languages and cultural practices sets restrictions on both offenders and victims to enjoy their rights and participate in the criminal justice process. Various other problems related to distance for defendants can also be identified, such as procedural variations in different jurisdictions and bilateral or multilateral cooperation at different levels of the criminal justice system. For foreign victims the problems associated with the criminal justice process may result in higher risk of secondary victimization.

37. In 1999, the European Commission produced a report entitled "Crime Victims in the European Union: Reflections on Standards and Action",[10] in which the issue of distance is discussed in detail. The report focuses on the position of victims in the criminal justice process when the crime occurs in a country other than their own. The report includes a number of suggestions as to how to respond to the particular needs of foreign victims. Those needs are discussed below.

38. For foreign victims, language problems can create constraints to their providing testimony and receiving adequate material and emotional support and legal assistance. Reporting of crime may be difficult and can even result in rejection of complaints as a result of incomplete statements stemming from language problems. Being a stranger to the system of the country in which one is victimized can make it difficult to obtain information about issues such as how to start a procedure, whether to testify or how to claim compensation. Because the conditions for claiming compensation vary between countries[11] the amount of compensation to be obtained by a non-resident is determined in a random manner and procedures are often long. The possibility of participating in the criminal procedure is particularly problematic for foreign victims because they are only staying temporarily in the country where the crime took place. In some countries it is possible to use fast-track procedures to speed up the process and the victim may be allowed to submit a statement in advance or even from his or her home country by means of video-conferencing, telephone hearings or other modern technologies.

39. Restorative justice in crimes involving foreigners may be considered in cases of less serious victimization. The immediate use of, for example, mediation in property crimes can make possible the compensation for damage or recovery of lost property outside the criminal procedure before the victim leaves the country. There is also the possibility of using third-party mediation, that is, where an intermediary acts on the victim's behalf in an effort to reach a mediated agreement. This can also be used when the victim has already returned to the home country.

40. Many of the above-mentioned difficulties are present, for example, in cases of trafficking in human beings for sexual exploitation and forced labour. The victims in such cases are usually foreigners, usually without knowledge of the language or culture of the country, ignorant of their rights and of the procedures of the criminal justice system and not in a position to attain information about victim services. The situation makes such victims particularly vulnerable and easy to control. Solutions that are made possible by restorative justice cannot be used. The question of how the rights of foreign victims can be guaranteed and, especially, of how secondary victimization by the criminal justice system can be eliminated poses a special challenge to Member States.

B. Offender's rights revisited

41. The emergence of organized crime has important implications for the balance between different parts of the criminal justice system. Perpetrators of organized crime commit their crimes by definition with a high degree of premeditation. Their crimes tend to attract large media attention and to arouse moral indignation and fear among the general public. Their activities do not just victimize individual persons, but often undermine the economic, legal and political order of society. (See the document entitled "International cooperation in combating trans-

national crime: new challenges in the twenty-first century" (A/CONF.187/6), for an analysis of the impact upon society.)

42. Since the stakes for the community are extraordinarily high, Governments are inclined to allow more infringements of the defendant's rights in the course of investigations against organized crime than in other cases. The point of gravity in the dynamic balance between the rights of the offender and those of the community tends to shift towards the latter if societies feel threatened by organized crime.

43. In some countries legislators have introduced special legal regimes for the repression and prevention of organized crime. For example, Japan has passed special administrative legislation concerning large-scale criminal organizations in which there are special legal provisions that can be used exclusively in relation to mafia-type organizations.[12] In many countries most organized crime is committed by more loosely organized groups or coalitions that do not function in the same way as the Mafia or Cosa Nostra. The draft United Nations Convention against Transnational Organized Crime follows a relatively open definition of organized crime and the scope of application of the provisions of the Convention will be wider than those of the national laws just mentioned. If more open definitions are used, more safeguards are needed for a restricted use of special provisions. The danger exists that provisions needed specifically in the fight against organized crime are eventually applied in all situations.

44. In many countries legislators have provided the police and prosecutors with new techniques and have granted them more rights in order to address organized crime more effectively. Special investigative techniques such as undercover operations, entrapment and the use of listening devices are permitted in certain circumstances. Such techniques intrude upon the privacy of citizens and would not otherwise be permitted. Provisions have also been made for the immunity of key witnesses for the prosecution and for the seizure and confiscation of illegally acquired assets. Measures aimed at the confiscation of criminal assets of organized criminal groups seem highly appropriate,[13] although in practice the implementation of such measures often proves difficult. Those convicted of organized crime may also be excluded from entering certain professions, establishing corporations or tendering for public works. Prison sentences for those convicted of organized crime are often served in special prisons because of the danger they represent and their capacity to corrupt prison personnel. In some countries such offenders are also treated differently in the correctional system. For example, in Germany a property penalty can be used as an alternative punishment together with a shorter prison sentence for those convicted of organized crime. As a consequence of that punishment, the offender may be deprived of his or her financial resources and may lose his or her position in the hierarchy of the criminal organization.[14]

45. The investigation and prosecution of organized crime expose criminal justice personnel at all levels to corruption and intimidation. Special measures need to be taken to protect personnel dealing with organized crime from those risks.

C. Protection of victims and witnesses

46. One of the problems in the prosecution of organized criminals is the hesitation of victims/witnesses to come forward to testify because of fear of retaliation. To remove that fear and to ensure the participation of witnesses, Governments must establish effective witness protection programmes. Unfortunately, in most developing countries no such provisions exist at present. Even if witnesses are offered some sort of protection before and during the trial, their safety in the long term remains a major concern. Special problems are caused by the long delays in the completion of trials: the longer a trial, the more opportunities defendants have to bribe or threaten witnesses.

47. Victim/witness protection programmes, which, for example, offer the witness a new identity after the trial, can only be used in special cases. Financial restraints may limit the frequent use of such measures and there is therefore an urgent need to experiment with other, less expensive means of witness protection, for example, for victims of trafficking in human beings. Some courts allow witnesses in organized crime cases to remain anonymous. In such cases special arrangements are made for the involvement of defence counsel in the examination. Such arrangements are less feasible in the context of the adversarial trial model of countries that follow common law. One of the basic rights of the defendant in this model is the right to confront the accuser. In other jurisdictions courts are more willing to compromise that right in order to protect witnesses from retaliation.

48. In cases of smuggling of migrants and trafficking in women for sexual exploitation, victims can be treated as violators of prostitution laws and/or immigration laws, which usually excludes them from receiving protection as victims. Illegal status also makes victims hesitant to report any violations against them to law enforcement authorities. In some cases, if the trafficked or smuggled person cooperates with the police and the prosecutor, his or her status can be changed from offender to victim/witness and he or she will be given access to support and protection services. However, as discussed above, witness protection programmes are difficult and expensive to arrange. This leads to the ethical question of how much cooperation can be expected from victims who may face a very real threat from the criminal groups involved with no reassurance that they and their families will be effectively protected. In some central and eastern European countries, the experience of the criminal police has shown that, once the main players of the organized groups behind trafficking and smuggling have been arrested, victims are more willing to cooperate. It must be stressed that in such cases the trafficked and smuggled persons are always perceived as victims.[15]

D. Victim-oriented sentencing and the new crimes

49. One characteristic of transnational crimes is, as already mentioned, the absence of easily identifiable individual victims. Victim involvement and victim participation will require arrangements for the representation of groups of victims. In civil law such arrangements are well developed in the form of class actions, for instance, those against the tobacco industry. Quite recently, a group representing victims of the Bhopal disaster, who successfully sued for damages in civil courts in the United States, filed a complaint with a criminal court in New York against the company involved. Under the *partie civile* model of continental European law, such class actions are sometimes also allowed. Organizations representing groups of victims of organized crime could in theory make use of those provisions and sue collectively for civil damages in the framework of a criminal trial. In theory, representatives of groups of victims could initiate criminal proceedings if the prosecutors refrain from prosecuting criminal organizations. This special option may be important in cases of collusion between organized criminal groups and the authorities or corruption of the latter.[16]

50. Restorative models rely heavily on the active involvement of individual citizens. In the case of organized crime, individual victims often cannot be identified. Even if the interests of distinct groups are damaged, however, it is difficult to imagine how leaders of local communities could engage in negotiations with leaders of organized criminal groups in a semi-formal setting. Fear of retaliation would prevent them from such involvement and in the absence of sufficient protection, private parties would normally be anxious not to provoke the organized criminal groups operating in their environment. Although there is ample scope for involvement of private parties in the prevention of organized crime and for their collaboration with state agencies, the part to be played by victims in the prosecution and sentencing of organized criminals seems limited. However, that situation appears to be changing, as shown by the growth of citizens' associations and non-governmental organizations denouncing organized crime in a number of countries.

IV. Conclusion

51. For many decades criminal lawyers have been working to define the rights of offenders vis-à-vis the State. The consensus reached on those rights is reflected in the United Nations standards and norms in crime prevention and criminal justice. Recently that consensus has been challenged, however, by new ideas concerning the accountability of offenders and even more by the promotion of the rights of victims of crime and the threat posed by transnational and organized crime.

52. International consensus has been reached on the basic principles of justice for victims of crime as embodied in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Most Governments have only recently begun to implement those rights. Exchange of information on best practices and cost-effective methods of implementation is urgently needed. Much progress can certainly be made in the improved treatment of victims of crime without negative implications for the offender. In some areas, however, rights for victims do interfere with the rights of offenders and difficult choices will have to be made. Many issues have yet to be solved. Opinions differ, in particular, about the extent of participation of victims in the decision-

making process. The restorative model may offer an alternative solution in some cases.

53. In the meantime, many countries are being confronted with new forms of transnational and organized crime. Certain traditional as well as newer notions of fairness for offenders and victims need to be re-examined in the light of that new threat. Certain established rights of offenders may also have to be reconsidered, because they impede effective criminal investigation and prosecution.

Notes

[1] Graeme R. Newman (ed.), *Global Report on Crime and Justice* (New York/Oxford, Oxford University Press, 1999).

[2] A. Schmid and J. de Graaf, *Violence as Communication: Insurgent Terrorism and the Western News Media* (Newbury Park, Sage, 1982).

[3] *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (United Nations publication, Sales No. E.92.IV.1 and corrigendum).

[4] Marc S. Groenhuisen, "Victim's rights in the criminal justice system: a call for more comprehensive implementation theory of victimology", *Caring for Crime Victims: Proceedings of the IX International Symposium*, Jan J. M. van Dijk and others, eds. (New York, Criminal Justice Press, 1999).

[5] Leslie Sebba, *Third Parties: Victims and the Criminal Justice System* (Columbus, Ohio State University Press, 1998).

[6] Vladimir N. Tochilovsky, "Victim's procedural rights at trial: approach of continental Europe and the International Tribunal for the Former Yugoslavia", *Caring for Crime Victims* ... .

[7] In an important ruling, the United States Supreme Court held evidence of the victim's sufferings admissible in capital murder trials (*Payne vs. Tennessee*, 501 U.S. 808 (1991)). The ruling stipulated that offenders are accountable for the full extent of the harm caused.

[8] T. Marshall, "The evolution of restorative justice in Britain", *European Journal on Criminal Policy and Research*, No. 4, 1996, pp. 21-43.

[9] Elmar G. M. Weitekamp, "The paradigm of restorative justice: potentials, possibilities and pitfalls", *Caring for Crime Victims* ... .

[10] Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee (COM (1999) 349 final).

[11] Anna Wargens, Crime Victims in the European Union (Umeå, Crime Compensation and Support Authority, 1999); and C. Bochman and K.-U. Griesheim, *Compensation Practices of States of the European Union Connected to Crimes Against Women*, HEUNI Paper No. 12 (Helsinki, European Institute for Crime Prevention and Control, affiliated with the United Nations, 1999).

[12] Further examples of this type of legislation are the 1970 Racketeer Influenced and Corrupt Organizations Act of the United States and the 1982 Rognoni-La Torre legislation of Italy.

[13] In the United States, courts can also issue civil injunctions, for example, appointing trustees who take over the management of corrupt labour unions (see James B. Jacobs, C. Friel and R. Radick, *Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime* (New York, New York University Press, 1999)).

[14] See Oliver Stolpe, "Due articoli bastano", *Narcomafie*, marzo 1999, p. 17, and Tatjana Hörnle, "Die Vermögensstrafe", *Zeitschrift für die gesamten Strafrechtswissenschaften*, 1996, p. 333).

[15] Information based on interviews by the Centre for International Crime Prevention of the Organized Crime Unit of the Criminal Police, Department of Trafficking in Human Beings, of the Czech Republic.

[16] Interestingly, the Racketeer Influenced and Corrupt Organizations Act of the United States also provides for the possibility of a civil action against criminal syndicates by groups of victims, e.g. companies who are harmed by racketeering can sue collectively for punitive damages. Little experience has yet been gained with such options in court.

Annex

United Nations standards and norms in crime prevention and criminal justice

A. Treatment of offenders

World social situation (Economic and Social Council resolution 663 (XXIV), annex, "Standard Minimum Rules for the Treatment of Prisoners") (1957)

Procedure of the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 1984/47)

Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners, annex I, "Model Agreement on the Transfer of Foreign Prisoners", and annex II, "Recommendations on the treatment of foreign prisoners"

Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111)

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110)

Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (General Assembly resolution 45/119)

International cooperation for the improvement of prison conditions (Economic and Social Council resolution 1997/36, annex, "Kampala Declaration on Prison Conditions in Africa")

International cooperation aimed at the reduction of prison overcrowding and the promotion of alternative sentencing (Economic and Social Council resolution 1998/23, annex I, "Kadoma Declaration on Community Service")

Penal reform (Economic and Social Council resolution 1999/27, annex, "Arusha Declaration on Good Prison Practice")

B. Torture and other cruel, inhuman or degrading treatment or punishment, extra-legal executions

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex)

Effective prevention and investigation of extra-legal, arbitrary and summary executions (Economic and Social Council resolution 1989/65, annex, "Principles")

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International cooperation in combating transnational crime: new challenges in the twenty-first century

International cooperation in combating transnational crime: new challenges in the twenty-first century

Background paper for the workshop on combating corruption**

Summary

The workshop on combating corruption will deal with issues related to the prevention and control of corruption using a multidisciplinary approach, as advocated in the Global Programme against Corruption of the Centre for International Crime Prevention and the United Nations Interregional Crime and Justice Research Institute. According to the Global Programme, the purpose of a national anti-corruption programme is (a) to increase the risk and cost of being corrupt; (b) to build integrity such that the rules of the game and the behaviour of the players change; and (c) eventually to ensure the rule of law.

Among the few success stories, the experience of Hong Kong Special Administrative Region (SAR) of China should have shown that it takes time and considerable effort to curb corruption in a systemically corrupt environment. After more than 25 years, Hong Kong SAR is now spending 90 million United States dollars per year (1998 figure) and employs 1,300 staff, who in 1998 conducted 2,780 training sessions for the private and public sector. The Independent Commission against Corruption (ICAC) is focusing its efforts on three major areas: (a) the Operations Department, which investigates complaints; (b) the Community Relations Department, which conducts community outreach, educational programmes and their development; and (c) the Corruption Prevention Department, which aims at preventing corruption through improved systems and procedures. The amount spent is probably more than all 50 African countries spent on fighting corruption in 1999.

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Taking into account the increasing number of international instruments dealing with corruption, the Workshop will be aimed at promoting coordinated efforts for the development of joint strategies for the implementation of those international instruments and best practices in prevention at the international, national and municipal levels.

A solid and successful anti-corruption strategy advocated rests on four pillars: (a) economic development; (b) democratic reform; (c) a strong civil society with access to information and a mandate to monitor the actions of the State; and (d) the presence of the rule of law. Given these four broad principles, there are four basic areas in which action can be taken against corruption within a country:

(a) The basic institutions of good governance need to be strengthened, first and foremost, the judiciary, which is itself the guardian of laws and of integrity. If the judiciary itself is corrupt, the problem is compounded and the public at large is left without the rule of law;

(b) The capacity and integrity of enforcement need to be enhanced. The best law has no value if it is not enforced. The best judges and magistrates are wasted if cases are never brought before them. Good investigations are wasted effort if the police or prosecutors are themselves corrupt;

(c) A Government needs to put in place a solid set of preventive tools. Codes of conduct and strong independent oversight bodies can help ensure that acceptable standards of behaviour are followed in both the private and public sector. Political leaders in all branches of government, the legislature and the judiciary can be required to have transparency in their own financial dealings through asset disclosure for themselves and members of their families;

(d) The public needs to be educated on the advantages of good governance. It must also be clear that the public itself bears a large share of responsibility for insisting on honesty and integrity in government and business. Members of the public need to learn not to let anybody buy their votes; not to pay bribes themselves; to report incidents of corruption to the authorities; and to teach their children the right values, for instance, that integrity is good and corruption is bad.

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I. Introduction

1. The topic of corruption has long been a priority of the Commission on Crime Prevention and Criminal Justice. The United Nations Interregional Crime and Justice Research Institute (UNICRI) has been entrusted with the organization of a workshop on combating corruption within the framework of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The preparatory work for the workshop has included, in cooperation with the International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, the organization of an International Conference on Responding to Challenges of Corruption in Milan, Italy, on 19 and 20 November 1999.

2. In its resolution 54/128 of 17 December 1999, entitled "Action against corruption", the General Assembly stressed the need for a global strategy against corruption, and invited Member States to examine the adequacy of their domestic legal regimes in terms of preventing and controlling corruption and providing for forfeiture of the proceeds of corruption.

3. The Office for Drug Control and Crime Prevention of the Secretariat has recently launched a Global Programme against Corruption (E/CN.15/1999/CRP.3), to be undertaken jointly by the Centre for International Crime Prevention and UNICRI. The Global Programme is aimed at assisting Member States in their efforts to curb corruption through two components, assessment and technical cooperation. The first component involves the development of a corruption-monitoring protocol for a thorough assessment of corruption at all levels, while the second component envisages the implementation of a set of technical assistance activities aimed at building and/or strengthening institutional capacity to prevent, detect, investigate and repress corruption.

4. The workshop on combating corruption will adopt the multidisciplinary approach advocated in the Global Programme and discussed at the Milan Conference, according to the following structure:

(a) Aspects and causes of corruption: the three levels of corruption, the organized crime nexus;

(b) Measures against corruption at the international and national levels;

(c) Prevention and best practices;

(d) Recommended executive, law enforcement, legislative, private sector, civil society and international measures.

5. The sessions of the workshop will aim at promoting the best practices approach advocated in the Global Programme, by bringing such practices to the attention of potential donor and recipient countries. Particular attention will be devoted to issues of prevention, taking into consideration their potential effectiveness in raising the risk of being caught when combined with: (a) a strong political will; (b) increased balancing of power across the legislative, judiciary and executive; (c) an empowered civil society; and (d) the existence of free and independent media with access to information to confront corruption.

II. Aspects and causes of corruption

6. There is a general consensus that, although the most serious consequences to the economic and social development of a country are likely to come from the spread of corruption at the upper levels, citizens' perception is related for the most part to their own first-hand experience with public administration at the "street" level. While bribery was seen for many years as a way of getting things done in most developing countries and countries with economies in transition, this "greasing the wheel" syndrome has turned into "sanding the wheel". This change in perception is due in part: (a) at the international level, to the recent economic crisis in Asia, which, according to many experts, was triggered in part by inadequate corporate governance practices (e.g. inadequate accountability and transparency) and (b) at the national level, to the fact that citizens who give bribes are actually less likely to be satisfied with the service received than those not paying bribes, as shown by data from surveys in Uganda (1998), Ukraine (1999) and the United Republic of Tanzania (1997). In the United Republic of Tanzania, survey participants who did not pay a bribe were 2.9 times as likely to find a higher level of service provided. On the other hand, those who paid bribes were 1.7 times more likely to receive poor service than good service. In fact only 13 per cent of those surveyed paid a bribe and received good service.[1]

7. Types of corruption have been classified in many ways in the literature. For example, distinctions can be made between "petty" or "survival" and "grand" corruption, or between "episodic" and "systemic" corruption.[2] Another distinction has been made between

"simple" and "complex" corruption as it is observed in European countries.[3] This paper will refer to three levels—"street", "business" and "top" political and financial—as referred to in the Global Programme against Corruption.

8. In discussions of the issue of corruption, a distinction must be made between the supply and the demand side of that activity. Corruption involving the supply side focuses on the payment of bribes in return for specific services, preferential treatment or contracts, while corrupt practices occurring on the demand side include solicitation of bribes and/or extortion. The latter is typical of corruption involving political and financial powers.

9. Countries that are in a developing phase are most susceptible to corruption. This is basically the result of a change in the needs of civil society as it moves towards a consumer society in combination with imperfectly organized and enforced public and judicial administrations. Previously existing corruption at the street level thus provides a hotbed for corruption at higher levels. Greed, social injustice, peer pressure and a lust for social status and power may all be contributing factors. Since corruption is in a narrow sense a victimless crime, the low risks of discovery and punishment do little to decrease the prevalence of these factors.[4] Additionally, certain country-specific factors, such as population size and natural resources, also appear to be strongly linked with the prevalence of bribery and corruption.[5]

10. Countries that are radically reforming their economic and political systems, such as many central and eastern European countries during the 1990s, are confronted with corruption in the business sector and at the high political and financial levels. Their exposure stems mainly from the strong impact of reforms on their national economy, through the large-scale privatization of former state-owned properties, such as enterprises, buildings and other holdings, which are an important part of national economic value.[6] The new opportunities arising from the distribution of such property increases the appeal of obtaining illegal advantages. The actors in this context are not only national or international business people, but also, in the case of high-level corruption, national decision makers holding political and administrative office.[7]

11. Finally, developed countries are also susceptible to corruption as a result of elite groups establishing closed networks in which distinctions between private and public interests become blurred.

12. A further multiplier of corruption is the increasing involvement of organized crime. As occurs in the business world, the influence of organized crime over public structures through the corruption of public officials is linked for the most part with international transactions, whether exports or imports. In that context, it should be noted that a close relationship exists between tax rates, trade barriers and the involvement of organized crime.

13. As a rule, corruption goes hand in hand with abuse of power, political and economic monopolies and organized crime. Thus, cultural, political, economic and legal measures, including criminal justice, to prevent and fight corruption cannot be divorced from broader processes of political democratization, economic and social development and reliability of financial and legal transactions. To implement effective action against corruption, commitment on the part of the Government at the highest level must be publicly demonstrated by providing a good example to all sectors of civil society, including politicians, business, public administration and the private sector.

A. Consequences of corruption

14. The consequences of corruption are disastrous both for the economy in general and for the citizens in particular. The pain caused by corruption at the village level has best been described by more than 3,500 villagers participating in 348 focus groups facilitated by Community Information, Empowerment, Transparency (CIET) in Uganda in 1998.[8]

15. Corrupt behaviour, such as bribery, also produces external costs in the form of "added taxes", which are mainly shouldered by the national economy. This undermines efficient allocation of badly needed financial resources for economic development, in particular in developing countries, and is distorting the composition of public expenditure.

16. In the context of international trade, corruption—in particular in the form of bribery—serves as a barrier to trade and investment.

17. As a result, a corrupt environment may present global investors with a poor environment in which to place their capital. Those investors most likely to make a long-term contribution to development may therefore be discouraged, while those who seek quick profits through dubious ventures may instead be encouraged.[9] This in turn increases the harmful effects of corruption on the global economy,

which have been mounting. It has been shown that countries suffering from pervasive corruption invest less and achieve lower economic growth.[10] A country with widespread corruption is likely to achieve aggregate investment levels of almost 5 per cent less than a country relatively free of corruption and to lose about half a percentage point of gross domestic product growth per year.[11]

18. Corruption in both the public sector and the private sector, regardless of the level at which it occurs, can jeopardize free trade, distort competitiveness and undermine the stability upon which the free market system is based.[12] Companies may resort to bribery as a means of bypassing existing trade barriers or reducing national tariffs and expediting international trade. Such action, however, undermines the position of the State, reducing government revenue and violating important environmental and safety standards, among other things.

19. Widespread corruption jeopardizes the credibility of Governments and their institutions. As a result, a negative culture arises in which priority is given to individual success and short-term achievement. Systemic corruption also weakens the effectiveness of punishment tools: it is hard to punish one person severely when so many others are likely to be equally guilty.[7] Within such an environment, organized crime is likely to grow and infiltrate high levels of public administration. In the worst scenario, public order may break down, as occurred in Albania in March 1997,[13] or there may be civil war.

B. Top-level corruption

20. Top-level corruption is often controlled by hidden networks and represents the sum of various levels and types of irregular behaviour, including abuse of power, conflict of interest, extortion, nepotism, tribalism, fraud and corruption. It is the most dangerous type of corruption and the one that causes the most serious damage to the country or countries involved. In developing countries, such corruption may undermine economic development through a number of related factors: the misuse or waste of international aid; unfinished development projects; discovery and replacement of corrupt politicians, leading to political instability; and living standards remaining below the country's potential.

21. Industrialized countries, in particular, have been freed with systemic corruption at the highest level of government. An environment in which long-term rule by one political party and a system made up of a few social and political groups that share power over decades is conducive to the establishment of networks. Such personal networks hide behind consensual agreements, justified by political, social, ethnic and religious arguments, so that it is difficult for the public to become aware of them. These links are often discovered inadvertently, allowing them only then to be prosecuted. Unfortunately, since individuals or small parts of the network are generally identified, the prosecution is, in most cases, unable to identify or eliminate the entire network.

22. As public awareness increases of the immediate negative effects of high-level corruption on day-to-day life, tolerance of the problem will be reduced. Media reports can be very effective in bringing corruption scandals to the attention of society. The perception that a scandal exists and the motivation to have the participants brought to justice are the first signs of citizens' empowerment and willingness to confront the phenomenon.

C. Corruption in public administration and the criminal justice system

23. Public administration officers, as the authority issuing licences, permissions, permits and other official authorizations, are both potential targets for corrupters, as well as instigators of corrupt practices. Within the police, opportunities are even greater, since that institution not only enforces the laws but also has the power to deprive individuals of their freedom, through the use of legitimate force, and to carry out investigations into criminal conduct that may lead to severe sanctioning and/or economic penalties.[14] It appears that, in particular in a number of developing countries and countries with economies in transition, further efforts are needed in order to improve the social status and salaries of public officials, thus making them less vulnerable to the lures of bribery. In Uganda, of the 18,412 households surveyed in 1998, 63 per cent reported having paid bribes to the police and 50 per cent to the courts. While the median bribe paid to the police was 20,000 Uganda shillings[15] (20 United States dollars) the median bribe paid to the courts was U Sh 50,000 ($50).[8]

24. Reforms are also needed to facilitate and make more transparent both the decision-making process and interaction with citizens. It is difficult to deal with corruption when there is a lack of confidence between the citizenry and public administration. Such a situation will be

exacerbated if discretionary power over public and/or private affairs is concentrated mainly in the political regime or the financial-political administrations that still maintain a philosophy of power over citizens rather than a service to citizens.[16] Initiatives must therefore be undertaken that not only reform the organization of public administration but also modify the political culture as it relates to economic instability and market culture.

D. Corruption in the private sector

25. Businesses may either be the perpetrator of corruption by offering bribes to public officials to secure contracts[17] or they may be the victim, being solicited for bribes by public officials or other businesses from whom they can obtain licences, contracts, protection or assurances. Corruption may be confined entirely within the business world, occurring between companies,[18] or it may extend into the arena of government or public officials. In either case, the corrupt environment tends to favour domestic companies familiar with the local way of doing business. In addition to lacking sufficient local market knowledge, foreign firms may also be liable in their own country if they are prohibited from offering bribes by their national foreign bribery legislation or if their Governments have ratified international agreements such as the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

26. Business activities involving corruption and bribery are not always wilful acts on the part of criminal organizations. It may be difficult for establishments to refuse to pay bribes. Organizations with a strong ethical corporate culture may be able to resist the temptation and large multinational corporations may be able to afford to lose contracts in order to avoid situations involving bribes. Such decisions, however, may be more difficult for smaller businesses whose survival may depend upon securing a particular contract. According to Laufer,[19] 97 per cent of all convictions in United States federal courts involved companies with less than 50 employees. This, however, may reflect the fact that small businesses are being targeted or that it is easier to obtain a conviction in cases involving smaller businesses with limited resources and skills.

27. Another problem faced by businesses are transactions in grey areas where corruption is less obvious. These are areas where activities such as the issuance of commission payments, signature bonuses, facilitation payments and donations to humanitarian causes all begin as legitimate practices, but somewhere in the process turn into corrupt practices or activities. The question for many businesses is how to decide what actually constitutes a bribe.[20]

28. When examining issues of corruption addressed in various international conventions on corruption and bribery as well as the penal laws in various countries, it becomes clear that there are no good subjective or objective measures of corporate compliance.[19] Furthermore, many such agreements focus on a narrow definition of corruption, which has resulted in the enactment of more comprehensive national legislative acts or penal laws to cover activities not addressed in international treaties.[21]

E. The link to organized crime

29. Situations in which legitimate businesses are reduced to paying bribes or witness legitimate practices transformed into criminal behaviour were examined in the preceding section. The situation is completely different where organized crime is involved in illicit activities.

30. There is a tenuous line between activities involving corruption and other organized criminal pursuits. Organized criminal groups are involved in corrupt practices, possibly in the form of extortion, bribery or illegal political campaign contributions in order to gain an advantageous share of a particular market. Laundering illegal profits for reinvestment into the legitimate economy further strengthens that advantage.

31. The corruption-organized crime nexus has long been recognized. Strategic corruption, or mutual accommodation, between organized crime and the police or long-lasting strategic alliances between organized crime and local authorities like town councils, political parties or entrepreneurs[22] are examples of the damaging influence of organized crime. An airline based in Japan participated in such an arrangement when it paid an estimated 22.8 million yen to an organized criminal front company over a three-and-a-half-year period in order to ensure peaceful shareholder meetings.

32. Because organized crime penetrates at all levels of the business world, measures to combat its influence must be developed at each of those levels as well.

33. The draft United Nations Convention against Transnational Organized Crime, in its article 4 *ter* (see

A/AC.254/4/Rev.6), envisages the criminalization of corruption when an organized criminal group is involved. The types of acts publishable under the Convention will include corrupt activities involving an international civil servant, a foreign public official, a judge or other official of an international court.[23] The importance of addressing organized crime's perpetration of and involvement in corruption is undisputed. The degree to which the draft Convention should address corruption issues remains unclear, however, in view of the fact that such offences may be included in future international instruments on corruption.

III. Responses to corruption

A. National measures

34. Successful experiences (such as in Hong Kong Special Administrative Region (SAR) of China[4] have shown that there are four important components to any anti-corruption strategy: (a) awareness-raising and public education; (b) institution-building across all sectors (judicial, legislative, executive, private, civil society, media); (c) prevention; and (d) enforcement.

35. A distinction should be made between the political and legal national measures to be considered in combating corruption. Progressive legal measures can only be enforced effectively when a political environment is established that does not tolerate corrupt behaviour and that guarantees good governance.

1. At the political level

36. Since corruption is a hidden crime, transparency within general public processes is one of the most important political needs. Public administration must be regarded primarily as a service to citizens and not as the exercise of power. Rules of conduct and clear rules of procedure concerning access to public works or contracting must therefore be developed and adopted. Furthermore, a clear and simply structured public administration is needed, so that there are few opportunities to use complex administrative arrangements to hide corrupt behaviour. In accordance with the principle of checks and balances, such a system should also include a strict separation of responsibilities so that no single agency or branch is responsible both for decisions and for their enforcement. Moreover, a strict separation between and independence of different administrative units is needed in order to avoid the appropriation of key positions within different institutions by corrupt networks. In combating high-level corruption, binding and unambiguous rules of recruitment and disciplinary sanctions must be established. Finally, the effectiveness of those measures must be ensured by independent monitoring and control mechanisms such as auditing.

37. In addition, an administration that is impervious to corruption also needs a civic political culture in which the public can critically observe official activities, which in turn requires transparency in and accessibility of fiscal data concerning all public transactions. Monitoring, auditing, the oversight of independent commissions and a strengthened free press can achieve those objectives.[24] The effectiveness of such anti-corruption monitoring bodies is illustrated by examples such as the Independent Commission against Corruption in Hong Kong SAR, the Corrupt Practices Investigation Bureau in Singapore and the New South Wales Independent Commission against Corruption in Australia.[25] Although the creation of independent commissions is regarded as largely successful, some question whether such organizations should have exclusive jurisdiction over the problem.[26]

38. The encouraging progress in combating crime by installing control mechanisms can also be seen in Poland and Uganda.[27] Another effective instrument to sharpen public pressure against corrupt institutions is the scorecard method, whereby users rate local service-providing agencies. This measure was installed in Bangalore, India, Samual Paul, helping to reduce bribery and resulting in the firing of corrupt officials.[28]

39. In addition, those economic policy reforms which would minimize opportunities for corruption should be considered. As stated previously, corruption is often used to circumvent tariffs, taxes and barriers. Therefore, minimizing such openings for illicit behaviour will help to reduce corruption and also open up new resources within the administration to control and enforce the remaining barriers such as environmental and security standards.

2. At the legal level

40. National measures within the legal system refer mainly to the development and application of various legal tools, such as criminal sanctions and—something that has mostly gone unnoticed so far—the use of non-criminal measures such as liability, negligence or the confiscation of illicit assets.

41. It should be noted at the outset that all administrative reforms also have to be implemented within the judicial system and the preferred administration. This may include restructuring the courts. A single-judge system is more vulnerable to corruption than a chamber or a jury system.[29] To guarantee a controlling system against corrupt judgements at least some form of appeal should be available. An efficient corruption-free court system needs proper case management to ensure equal and fast access to justice.

42. Furthermore, successful prosecution depends on adequate procedural rules. In that context, rules, laws and legal measures protecting witnesses and whistle-blowers should be available. This is motivated by the fact that corruption cases are often only discovered by relying on those information channels. Experience has proved that a specialized jurisdiction with secret witnesses and hidden evidence is not an adequate measure for combating corruption. This is mainly because the public is likely to perceive it as faceless justice and, because of the latter's lack of transparency, they may lose confidence in the judicial system.[30]

43. Strengthening the criminal law is one of the most important legal tools against corruption. This includes norms for the punishment of bribery and corruption on the supply and the demand side within the public and private sector. Continuing along this line, since business- and high-level corruption are often committed by legal persons, normative solutions must be developed concerning their criminal responsibility.

44. However, criminal law as a repressive measure must be supplemented by preventive, non-criminal tools to achieve a new ethical, corruption-free culture. As an example, reforming commercial law is one of the optional measures. Binding rules of conduct, auditing and control are needed to establish transparency within the business world and public administration. Furthermore, corruption within the private sector should be sanctioned, especially by rules of private law, to ensure that corrupt behaviour becomes unattractive. The example of the Republic of Korea shows that such rules could be effectively applied by finding companies negligent for breaching standards of supervision.[31]

B. Prevention

45. Four components appear to be crucial for effective prevention of corruption: (a) economic development; (b) democratic reform; (c) a strong civil society with access to information and a mandate to oversee the State; and (d) the presence of the rule of law.[2] It should be noted, however, that there is no single model or practice that suits all countries and each jurisdiction needs to explore practices drawn from a variety of options.[4] Measures to prevent corruption, in the form of codes of conduct and training in ethics, must focus on various sectors and all levels within society to include local institutions in the public and private sectors, including public administration, political office and corporations at the local, national and international levels.[24]

46. Organizations are instrumental in curbing corruption within their own structure through internal measures such as clear procedures, a simple accounting system, an effective supervisory system and transparency, and the adoption of a suitable code of conduct will raise ethical standards within the organization. Leaders must foster a culture of honesty within their organizations and compliance programmes must be introduced that include training of employees at all levels. Businesses must define and apply corporate values and foster an "aspiration" mentality as opposed to a "compliance" mentality.

47. On the whole, Governments have been reluctant to acknowledge the very real problem of solicitation. This creates the illusion that businesses are the source of corruption. The solution is for Governments to acknowledge the demand side. Companies need some form of assistance against solicitation of bribes and Governments must take responsibility for dealing with this. Cooperation must be international.

48. In the 1997 UNICRI study on corruption in countries with economies in transition,[32] suggestions were proposed for the development of prevention measures: (a) increase fair competition; (b) reduce monopolies in the market; (c) enact an adequate economic and social policy; (d) introduce checks and balances for decision makers; (e) increase transparency in public administration and simplify administrative procedures; (f) introduce integrity testing, auditing procedures and structures; (g) enhance legislation and control of corruption in vulnerable sectors; (h) improve controls over banks, including by removal of bank secrecy, encouragement of detecting and reporting of corruption, and reduction of cash transactions; and

(i) provide more information to the public and raise public awareness.

C. Use of statistical data to understand the dimensions of corruption

49. It is usually difficult to provide a clear picture of the dimensions of corruption through the use of official crime statistics. First of all, at best, official crime statistics measure the extent to which people breach current legal codes and therefore cannot record those types of corruption which are not envisaged by current domestic legislation. Furthermore, only incidents that are actually reported to the police are recorded. If people are afraid of or do not have faith in the criminal justice system, they will not report incidents even if they become aware of them.[32]

50. Nevertheless, some standardized information is available at the international level through the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems.[33] The International Crime Victim Survey[34] has an advantage over other sources on corruption because it measures the magnitude of crime based on the direct experience of citizens and targets it to public officials. In other words, it attempts to capture the magnitude of bribery by public officials, which is probably the least transparent yet most conventional form of corruption.[35]

51. More and more surveys are being used in the battle against corruption. Broadly there are two categories of surveys:[36]

(a) *Awareness-raising surveys*. These are conducted by international organizations and measure perceived levels of corruption across countries in order to raise awareness and encourage international monitoring. The data are used mostly by international organizations for awareness-raising and sometimes for monitoring (for example, the Transparency International corruption perceptions index);[37]

(b) *Community-based planning surveys*. These surveys are conducted by national anti-corruption agencies and measure perceived levels of corruption at the national and/or municipal levels in order to establish a baseline to increase accountability, but also to facilitate community-based planning, where the data are being used as an input to a national or municipal action planning process. Such surveys tend to be large, they are often supplemented by focus groups and may be disseminated through broad-based action planning workshops.

52. The opinions of selected professionals from the criminal justice system and/or business people, such as those used in the surveys carried out by Transparency International for the production of its corruption perceptions index, can constitute a third source of information.[38] The index relies mainly on perceptions of the importance of the phenomenon drawn from different sources, at different periods of time and from different individual respondents.

53. The high correlation among various international statistical sources, although those sources are very different one from another, suggests that a high level of street corruption is likely to predict a high level of business corruption, as well as a high level of political and financial corruption (which rarely comes to light). The opposite may not be true, since a high visibility of serious cases of political and financial corruption may reveal the willingness of a society to eradicate the phenomenon, thus indicating a widespread consensus against corrupt behaviours.

54. A study on corruption carried out by UNICRI in nine countries with economies in transition in 1997[39] identified problems in the areas of legislation, organization, development of skills and information. In the area of legislation a lack of comprehensive anti-corruption laws, including lack of provisions to extend corruption to the private sector and foreign officials, was identified. In addition, obscure provisions existed regarding certain investigative techniques, such as wiretapping and/or electronic surveillance; undercover agents; protection of witnesses and means of securing their testimony; and the possibility of investigating private banks and international transactions. The study concluded that the concept of corporate liability was generally absent.

55. Among the organizational, skill-related and information-related obstacles to combating corruption, it was found that a lack of cooperation occurred among and within national agencies, other countries and international organizations. There were also insufficient financial resources and technical equipment to apply special investigative techniques and inadequate databases and networks to allow for analysis and monitoring of corruption trends and cases, or to carry out information exchange among the different agencies dealing with corruption. Moreover, criminal justice personnel had low social status and there were difficulties recruiting competent personnel.

Finally, there was a lack of intra-organizational auditing and monitoring and problems existed in implementing codes of conduct.

56. These are constraints that can make it difficult to address the problem of corruption properly that should be dealt with in order to ensure that legislation is enforced effectively.

D. Future areas of concern

57. There are a number of areas in which Governments and businesses alike must concentrate their future efforts if the fight against corruption is to be successful. The relatively recent international/transnational dimension of corruption has led to overlapping concepts of transnational organized crime and corruption, international fraud and economic crime. Each of these must be properly addressed by comprehensive tools that encompass all possible forms of misconduct in international financial transactions.

58. International cooperation should concentrate mainly on the harmonization of trade, security, environmental and tax rules in order to close loopholes that facilitate corruption and illegal gain. Moreover, in order to achieve concrete results, close cooperation between the police, customs and financial authorities of the countries concerned is needed. Since international transactions are also used to hide illicit gains, adequate measures against money-laundering are recommended. Finally, worldwide accounting and auditing standards are necessary to ensure transparency in international business transactions.[40]

59. With the globalization of markets, the growth of multinationals and the expansion of commerce via the Internet, jurisdictional problems will arise in the investigation and prosecution of cases. As cases become more complex, the necessary expertise must be developed to allow the successful investigation and prosecution of elaborate corruption and bribery schemes. Illicit business contributions to political campaign funds should also receive attention.

60. Moreover, the culpability of legal persons and which are the responsible officers within organizations must be determined and the appropriate penalties decided upon. Legislation must make possible successful prosecution of businesses or corporations and provide for the seizure of assets obtained through bribery, corruption or other illicit practices.

61. As organized crime becomes more involved in corrupt business practices, resulting in the need to launder illicit gains, the transparency of off-shore banking companies will become a major concern.

IV. International experience and activities

62. Since the phenomenon of corruption is a worldwide problem, international cooperation is required to close loopholes caused by the existence of double standards[41] and to undertake joint measures.

63. With the growing globalization of the economy and the internationalism of illegal activities, international cooperation among Governments, with the involvement of international organizations, the private sector and civil society, has become essential to fight corruption. The media have devoted considerable attention to corruption in the public sector, while citizens have begun to speak out more resolutely against unethical behaviour by public officials. A number of instruments have already been adopted to combat corruption at the international level.

A. United Nations

64. The most important instruments promoted by the United Nations in the area of corruption are the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979, and the International Code of Conduct for Public Officials, which the Assembly adopted in its resolution 51/59 of 12 December 1996.[42]

65. In 1996, the General Assembly adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex), in which it recognized the need to promote social responsibility and appropriate standards of ethics both in the public sector and in private corporations, including transnational corporations, and for individuals engaged in international commercial transactions, *inter alia*, through observance of the laws and regulations of the countries in which they conduct business and taking into account the impact of their activities on economic and social development and environmental protection.

66. To provide assistance to countries in applying those instruments and their provisions, the United Nations has

also drawn up a manual on practical measures against corruption.[26] A meeting of experts from all regions was convened in Buenos Aires in 1997 (see E/CN.15/1997/3/Add.1) to consider ways and means of strengthening international cooperation in this area, as well as to offer suggestions on the revision and expansion of the manual. The expert group meeting recommended that consideration be given to a range of specific measures, including:

(a) Disclosure by public officials of assets and liabilities;

(b) Introducing or strengthening existing independent auditing institutions or bodies that monitor public expenditures;

(c) Establishment of specialized anti-corruption bodies;

(d) Measures to introduce or encourage transparency in the management of public funds and in the decision-making process;

(e) Establishment of transparent and competitive procedures for tendering and supervision of public works contracts and introduction of clear procurement rules;

(f) Measures to ensure free competition, including anti-trust regulations;

(g) Measures to prevent improper advantages;

(h) Elimination or curtailment of bank secrecy;

(i) Measures to ensure and encourage public participation;

(j) Measures to ensure accountability and effective disciplinary action;

(k) Financing of political parties and campaigns;

(l) Guaranteeing freedom of parties and the right to information;

(m) Preparation and introduction of codes of ethics for certain types of profession;

(n) Preparation of a programme to encourage the implementation of guidelines for the performance of duties similar to the International Code of Conduct for Public Officials.

67. The recommendations of the expert group meeting were also at the basis of the development of the corruption monitoring protocol, the assessment component of the Global Programme against Corruption.

68. The issue of corruption has been taken up by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. At its sixth session, the Ad Hoc Committee discussed the possible inclusion of articles on the criminalization of corruption of public officials by organized crime groups and on other measures to prevent and control such corruption. Furthermore, in its resolution 54/128 of 17 December 1999, the General Assembly requested the Ad Hoc Committee to explore the desirability of an international instrument against corruption, either ancillary to or independent of the Convention to be developed after the finalization of the Convention, and the three additional instruments referred to in resolution 53/111, and to present its views to the Commission on Crime Prevention and Criminal Justice. The Ad Hoc Committee decided to take action on the issue during its seventh session, to be held in Vienna from 17 to 28 January 2000, and made specific recommendations for the development of a global instrument against corruption.

B. European Union

69. A protocol to the Convention on the Protection of the European Communities' Financial Interests, adopted in 1996, criminalized active and passive corruption of national and Community officials. A second protocol, adopted in 1997, included provisions for the criminalization of laundering of proceeds generated by corruption and introduced the liability of legal persons involved in organized crime. The Convention on the Fight against Corruption involving Officials of the European Community or Officials of Member States of the European Union, adopted in 1997, criminalized active and passive corruption of officials even where financial damage to the Union was not at issue. The Joint Action of 22 December 1998 adopted by the Council on the basis of article K.3 of the Treaty on European Union, on corruption in the private sector, constituted another important instrument.

70. The Action Plan to Combat Organized Crime, endorsed by the European Council of Ministers in June 1997, identified the need for a comprehensive European Union policy to fight against corruption. The Commission advocated the establishment of a European Union policy against corruption in response to a call from the European Parliament for the development of such a policy and in anticipation of the Action Plan.[43]

C. Organisation for Economic Cooperation and Development

71. At the national level, Governments have responded to problems of corruption in various ways, including with campaigns to combat it, evaluation of the rules applying to public officials and adoption of service charters and codes of conduct. OECD has been helping its 29 member countries to review and reform the institutions, systems and conditions used to promote ethics in the public sector and its work on public sector ethics contributes to the global battle against corruption by addressing the demand side of the corruption equation.[44] In the OECD approach, corruption is recognized as not simply an individual criminal action, but rather the result of a systematic failure and management problem reflected in weak public institutions.

72. OECD has found that the State's role in preventing corruption is as complex as the phenomenon of corruption itself and that a combination of interrelated mechanisms including a system for managing ethics, specific prevention techniques and effective law enforcement ("an ethics management system"), is necessary for success. Based on a set of principles for managing ethics in the public sector developed and agreed upon by representatives of member States to support Governments in their review of ethics management systems, the OECD Council adopted the Recommendation for Managing Ethics in the Public Service in April 1998. The Council also instructed its Public Management Committee to analyse information provided by member States on how they apply those principles and to provide support to countries to improve conduct in the public service.

73. In 1994, OECD member States agreed on an initial Recommendation on Bribery in International Business Transactions. Subsequently, the Council adopted a Revised Recommendation on Combating Bribery in International Business Transactions in May 1997. Based on those Recommendations and on further discussion, all OECD member States and five non-member States adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which came into force on 15 February 1999.

74. The OECD Convention defines a public official very broadly in order to cover all persons exercising a public function, which may include any activity in the public interest, and a foreign official can be either a company officer of a public enterprise, a head of a government-designated monopoly or a senior officer of any company in which the Government exercises a dominant influence through majority ownership or control. The Convention requires that bribery of foreign public officials be punishable by effective, proportionate and dissuasive criminal penalties comparable with those applicable to bribery of domestic officials.

D. Council of Europe

75. The Council of Europe has played a significant role in the international fight against corruption since the 19th Conference of European Ministers of Justice, held in Malta in 1994, through its activities within the framework of the Multidisciplinary Group on Corruption. The cornerstone of the Council's strategy against corruption is the Criminal Law Convention on Corruption, which was adopted in November 1998 and has since been signed by 30 States and ratified by one.[45]

76. The substantive law elements in the OECD and the Council of Europe instruments follow directly from the aim and scope of each Convention. While the OECD Convention prohibits one specific type of corruption and makes no provision for reservations, the Council of Europe Convention prohibits various forms of corruption and allows for reservations. As mentioned, the latter Convention provides for the criminalization of both active and passive bribery of domestic officials and is considered one of the most comprehensive treaties in the field, because it covers not only foreign public officials but also the passive side of bribery, and public officials and parliamentarians not only of member States but also of non-member contracting countries to the Convention.

77. The Council of Europe also finalized a Civil Law Convention on corruption in 1999, which is the first attempt to define common principles and rules at an international level in the field of civil law and corruption. The Council has also established a monitoring mechanism, the Group of States against Corruption (GRECO), which became operational in May 1999 and involves 21 member States. GRECO aims at improving the capacity of its member States to fight corruption by means of a dynamic and flexible process of mutual evaluation and peer pressure based on the 20 Guiding Principles for the Fight against Corruption (adopted by the Committee of Ministers in its resolution (97) 24 of 6 November 1997) and the implementation of the international legal instruments to be adopted. States that become parties to the Criminal Law

Convention or other instruments will automatically enter into a obligation to participate in GRECO and to accept its monitoring procedures.

E. World Bank[46]

78. The topic of combating corruption has recently generated substantial academic interest as well as support from the highest levels of the World Bank and the international community. The World Bank defined its role in the area in September 1997 and since that time corruption has become an increasingly important consideration in its lending activities.

79. The new Comprehensive Development Framework of the World Bank is founded upon the premise that corruption is a major hindrance to economic development and as a result governance issues have to be addressed as an important part of the development framework. More and more development experts have come to the conclusion that it is impossible to alleviate poverty without first curbing corruption. (This is especially the case in countries such as Nigeria, where 10 per cent of gross national product is diverted, or Indonesia, where the leakage from donor programmes is estimated at between 25 and 30 per cent.) The Bank is concerned not with the exercise of state powers in the broad sense, but specifically with the appropriate management of the public sector and the creation of an enabling environment for the private sector.

80. The framework for addressing corruption guides the World Bank at four levels:

(a) Preventing fraud and corruption within Bank-financed projects;

(b) Helping countries that request support in their efforts to reduce corruption;

(c) Greater consideration of corruption in country assistance strategies, country lending considerations, policy dialogue, analytical work and the choice and design of projects;

(d) Adding its voice and support to international efforts to reduce corruption.

81. The ultimate goal of the World Bank's strategy is to help countries move from systemic corruption to an environment in which a well-performing Government minimizes the negative effects of corruption on development. The strategy is based on action coming from three directions: (a) economic policy reform; (b) institutional strengthening; and (c) international action. The model assumes that corruption is a function of weak institutions and of policies that generate economic returns.

F. Other bodies and mechanisms

82. In 1977, the International Chamber of Commerce published its Rules of Conduct to Combat Extortion and Bribery. In 1994, the Rules were revised and made more stringent. Intended to aid businesses in self-regulation, the Rules address offences of extortion, bribery, kickbacks, auditing, financial recording and political contributions. They give priority to large-scale extortion and bribery involving politicians and senior officials as these represent the greatest threat and could cause the gravest economic distortions.[12]

83. To address problems of corruption in countries with economies in transition, it is necessary to promote economic growth, build strong democratic institutions and engender popular support for democracy. The European Commission and the Council of Europe have launched a joint programme, entitled OCTOPUS, aimed at strengthening and developing legislation and competence and improving cooperation among judicial authorities and law enforcement agencies of those countries.[47] OECD and the European Union are undertaking another joint initiative for these States, the SIGMA programme, which provides advice on building modern systems of public administration in 13 central and eastern European countries.[48]

84. The International Monetary Fund (IMF) also plays an important role in the area of combating corruption. In 1999 its Interim Committee adopted the Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles, which followed the Code of Good Practices on Fiscal Transparency developed in 1998. The object of the Codes is to increase transparency in public and financial sectors. In order to increase the transparency of its own operation, IMF released public information notices, many policy papers, summaries of Board discussions, the external auditors' reports on IMF surveillance and other documents. Increasing transparency is, however, constrained at times by the unique and important role of IMF as a confidential adviser to member countries.[49]

85. Cooperation in international law enforcement is also important in enhancing accountability and transparency.

Following the Lima Declaration of 1997,[50] international organizations with mandates in the area of combating corruption, including the International Criminal Police Organization (Interpol) and the Customs Cooperation Council (also known as the World Customs Organization), should take steps to strengthen cooperation in international law enforcement. The initiative taken by Interpol was launched during the 1st International Conference on Corruption-Related Crime, held in Lyon, France, in April 1998. The initiative involved consulting a group of experts consisting of both law enforcement practitioners and an advisory anti-corruption group. The mission statement of the Interpol group emphasizes that (a) law enforcement sees itself as an integral part of the community; (b) both reactive and proactive actions should be employed in order to combat corruption effectively; and (c) the battle has to be fought by the community as a whole.[51]

86. Other institutions, including the Commonwealth Secretariat[9] and the Organization of American States (OAS), have also implemented their own instruments. The Commonwealth Secretariat has established an Expert Group on Good Governance and Elimination of Corruption in Economic Management, which prepared a report and a document entitled "Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption". OAS has promoted the Inter-American Convention against Corruption (E/1996/99, annex), which is aimed at fighting corruption in order to strengthen democratic institutions and to prevent distortions in the economy, improprieties in public administration and damage to civil society.

87. Although each institution has its own objectives and institutional framework, the effects on the legislation and practice of parties should be complementary. Co-ordination, sharing information and mutual understanding among international organizations are also important in enhancing the effectiveness of the international fight against corruption.

V. Measures required to succeed in the fight against corruption

88. Strong demand for good governance is increasing throughout the developing world. From local authorities and national Governments to donor institutions, corruption is one of the greatest obstacles to development. The governance programme presented in this paper works to empower individuals, communities and Governments by disseminating knowledge. This, in turn, results in greater government accountability and transparency, which are integral to building institutional capacity and improving service delivery. The programme helps Governments work more efficiently and helps the entire society participate in building an enabling environment for equitable and sustainable growth, resulting in timely and cost-effective services delivered to the public.

89. There are a number of areas that demand the attention of Governments. These are (a) the organized crime-corruption nexus; (b) the use of off-shore banks for the purpose of laundering money; (c) illicit business contributions to political campaign funds; (d) jurisdictional problems arising in the investigation and prosecution of transnational corruption schemes; and (e) the development of expertise in the investigation and prosecution of complex corruption cases.

90. Organizations in the public and private sector at the local and national levels must adopt various measures if they are to achieve success in the fight against corruption. Economic development, democratic reform, a strong civil society with access to information and the presence of the rule of law appear to be crucial for the effective prevention of corruption. A list of measures or initiatives that should be developed and implemented at various levels within the public and private sectors is presented below.[2] Measures have to address both policy and systemic issues and behavioural or cultural aspects of change. In order to address both aspects in a holistic and integrated manner, the measures have been organized in five groups:

(a) *Public sector (executive) measures*

(i) Open up government to the public by inviting civil society to oversee aid and other government programmes; by establishing and disseminating service standards; and by establishing a credible complaints mechanism;

(ii) Deliver services closer to customers, thereby increasing transparency and in turn accountability;

(iii) Implement civil service reform that will professionalize the civil service and increase focus on integrity and results; replace patronage with consumer rights; and replace nepotism with meritocracy;

(iv) Enforce access to information;

(v) Focus on prevention projects that educate society as to the evils of corruption and instil a moral

commitment to integrity in dealings with business and government officials;

(vi) Create a specialized independent anti-corruption commission that focuses on prevention (research, monitoring education, training and advice), but also has investigative powers;

(vii) Strengthen state institutions by simplifying procedure; by improving internal control, monitoring, enforcement and efficiency; and by establishing the right incentives and remuneration;

(viii) Develop and strengthen independent investigative, legislative, judicial and media organizations;

(ix) Provide protective measures for witnesses and whistle-blowers;

(x) Provide independent audit and investigative bodies supported by adequate human and financial resources;

(xi) Develop or strengthen administrative remedies such as confiscation of illicit assets;

(b) *Law enforcement measures*

(i) Enforce the independence of the judiciary and the prosecution;

(ii) Increase the transparency and accountability of the judiciary;

(iii) Ensure integrity and accountability of the judiciary by predetermining assignment of judges; by securing the independence of public prosecutors; by increasing transparency through computerization; and by transparent monitoring of declared assets of judges;

(iv) Increase internal oversight and supervision;

(v) Secure the integrity of the judiciary by enforcing codes of conduct; by monitoring declared assets; and by strengthening internal disciplinary bodies;

(c) *Legislative measures*

(i) Enforce the independence of the legislature;

(ii) Pass and enforce necessary anti-corruption laws on campaign financing; independence of supreme audit bodies; freedom of information; conflict of interest; freedom of the media and freedom of expression; protection of whistle-blowers and witnesses; shifting the burden of proof regarding confiscation of illicit enrichment; decreasing the discretionary powers of the executive; amnesty; and investigative powers to conduct integrity tests or other investigative measures;

(iii) Secure the integrity of the legislature by enforcing codes of conduct; by monitoring declared assets; and by strengthening internal disciplinary bodies;

(iv) Strengthen the public accounts committee to oversee the supreme audit bodies reporting to parliament;

(v) Strengthen the anti-corruption watchdog agencies reporting to the legislature by securing the independence of anti-corruption agencies; by building credible complaints mechanism; and by enforcing integrity;

(d) *Private sector measures*

(i) Educate, aid and empower businesses to refrain from participating in illicit behaviour as either the victim or perpetrator of corrupt transactions;

(ii) Promote ethical standards in business through the development of codes of conduct, education, training and seminars;

(iii) Develop high standards for accounting and auditing and promote transparency in business transactions;

(iv) Develop clear legislation and regulation standards so that the line between legal and illicit activities is a clear one;

(v) Develop normative solutions to the problem of criminal responsibility of legal persons;

(vi) Businesses themselves must develop sufficient internal control mechanisms, train personnel and develop sanctions for transgressions;

(e) *Independent (civil society) measures*

(i) Increase education, awareness and involvement of civil society in order to mobilize civil society organizations (the media, non-governmental organizations, professional associations and research or university institutes) to research and monitor good governance;

(ii) Create and strengthen networks of non-governmental organizations to share information on local, national and regional initiatives;

(iii) Strengthen civil society to empower citizens to demand integrity and fairness in government and business transactions;

(iv) Develop good databases and networks for the analysis and monitoring of corruption trends and cases, as well as information exchange among different agencies dealing with corruption;

(v) Build and maintain an independent, professional and free media with a nation-building role by capacity-building; by enforcing integrity through introduction and monitoring of codes of conduct; by encouraging owners and editors to allow balanced reporting; and by encouraging the media to police itself;

(f) *International measures*

(i) Exchange information on regional and national best practice initiatives;

(ii) Develop, ratify and incorporate international instruments to encourage and strengthen anti-corruption programmes at the national level;

(iii) Consider the development of a comprehensive United Nations convention against corruption;

(iv) Establish adequate monitoring systems;

(v) Establish simplified and transparent competitive public procurement procedures and encourage the adoption of international rules in this area;

(vi) Adopt international rules in the areas of off-shore banking and international investment;

(vii) Increase cooperation in the investigative, prosecutorial and judicial realms.

VI. Conclusion

91. Corruption has debilitating effects upon society. It undermines the efficient allocation of financial resources for economic development and alters the composition of public expenditure. In addition to its detrimental effects on economic growth, corruption jeopardizes free trade, distorts competitiveness and undermines the stability upon which the free market system is based. Corruption further jeopardizes the credibility of Governments and their institutions and provides a breeding ground for organized crime to flourish. Moreover, it is a phenomenon that transcends national boundaries, affecting the public and private sectors, while businesses and public officials can be either perpetrators or victims of corrupt practices.

92. Strategies to fight corruption do not reside solely with criminal justice, but should also be coordinated with economic and social policies and the development of civic political culture. Because corruption is a process and a relationship, the State, its public administration and the citizens all share a responsibility in preventing and controlling it.

93. A number of mechanisms exist to fight corruption at various levels (local, national and transnational) within both the public and private sectors. International instruments, in the form of declarations, conventions and codes of practice and conduct, promote transnational cooperation and define prohibited and punishable offences. Those instruments, however, are limited and legal loopholes must be eliminated by means of national legislation. In spite of limited success stories, widespread implementation of anti-corruption measures and monitoring mechanisms has not happened, which underlines the need for a comprehensive United Nations convention against corruption.

94. In conclusion, future success in curbing corruption lies in an emphasis on prevention rather than oppression and, where necessary, in administrative or civil penalties rather than a penal approach. Firstly, awareness must be raised among citizens, businesses and public employees of the dangers of corruption. Then a moral commitment to and demand for integrity in government and private enterprises must be generated and encouraged. Public sector reforms, private sector initiatives and law reform efforts should emphasize prevention as well as prosecution. Finally, cooperation must be generated between businesses and between public and private sector organizations at the local, national and transnational levels to ensure success in fighting corruption.

Notes

[1] Petter Langseth and Bryane Michael, "Are bribe payments in Tanzania 'grease' or 'grit'?", *Crime, Law and Social Change*, No. 29, 1998, pp. 197-208.

[2] Petter Langseth, "Prevention: an effective tool to reduce corruption", paper presented at the International Scientific and Professional Advisory Council Conference on Responding to the Challenge of Corruption, held in Milan, Italy, on 19 and 20 November 1999 (the "Milan Conference").

[3] Simple corruption, or the base of the pyramid, refers mostly to bribery of public administrators and generally involves transactions between two individuals. Complex corruption, the top of the pyramid, generally corresponds to political corruption and involves several actors from both the supply and demand sides (see Ernesto Ugo Savona and Laura Mezzanotte, *La corruzione in Europa* (Roma, Carocci, 1998)).

[4] Alan Lai Nin, "Corruption prevention: a Hong Kong perspective", paper presented at the Milan Conference, p. 2.

[5] Cheryl W. Gray and Daniel Kaufmann, "Corruption and development", World Bank, *PREMnotes*, No. 4, May 1998, p. 2.

[6] Neritan Ceka, "Corruption in Albania: the struggle against windmills", paper presented at the Milan Conference, p. 2; and Bozo Kovacevic, "Corruption in Croatia", paper presented at the Milan Conference, p. 2.

[7] Bozo Kovacevic, "Corruption in Croatia", paper presented at the Milan Conference, p. 1.

[8] The following quotations are taken directly from Petter Langseth, "Update on Uganda: staying the course", World Bank, *PREM News*, June 1999:

(a) *At the hospital*

A man had taken his pregnant wife to hospital to have their baby delivered. He did not have the money demanded by the hospital. While he searched for money, the hospital workers let his pregnant wife die." (Soroti, site 1, men's group);

(b) *At the police station*

"If a woman is arrested, the policemen rape her." (Mukono, site 4, women's group);

"My husband was beaten by a thief. On the way the local commissioner caught the thief and took him to the police. The case was dismissed after the father of the boy paid the magistrate some money." (Hoima, site 2, women's interview group.

"Police bosses expect their subordinates to give them money and the subordinates are forced into corruption to satisfy their bosses. In turn, the bosses do not inspect or supervise." (Mubende);

(c) *In court*

"In courts, people who have money are usually set free and the poor remain in jail for a long time." (Lira, site 2, women's group);

"I had a land dispute with my neighbour, which we took to the police. I paid 270,000 shillings and my rival paid 260,000, but our case was not settled. When we both realized we were wasting a lot of money, we had to reach a compromise to avoid further wastage." (Kitgum, site 3, men's group);

(d) *How can we safely report corruption*?

"The communities should learn to report cases of corruption. But to whom? And are we safe?" (Mbale, site 3, men's interview group);

"The community is willing to report corrupt service workers, but they do not know where the offices of the Inspector-General of Government are in their area." (Luwero, site 4, women's group).

[9] Richard Nzerem, "Commonwealth action on corruption", paper presented at the Milan Conference, p. 5.

[10] Paulo Mauro, "The effects of corruption on growth, investment, and government expenditure", *A Cross-Country Analysis: Corruption and the Global Economy*, Kimberly Ann Elliott, ed. (Washington, D.C., Institute for International Economics, 1996), pp. 83-107.

[11] Rick Stapenhurst and Sahr Kpundeh, "Toward a model for building national integrity", *Development Studies* (Washington, D.C.), 1998.

[12] S. Bially, "International business community fosters ethical behaviour", *Public Management Forum*, vol. II, No. 5 (1996).

[13] In March 1997 riots caused the destruction of public order. The riots were provoked by the loss of money invested in pyramid schemes by thousands of people, owing to corruption within the bank sector involving also public authorities.

[14] M. Punch, "Police corruption and its prevention", paper presented at the Twelfth Criminological Colloquium of the Council of Europe, held in Strasbourg, France, from 24 to 26 November 1999.

[15] The monthly pay of a young teacher was U Sh 75,000.

[16] U. Zvekic, *Criminal Victimisation in Countries in Transition*, UNICRI Publication No. 61, 1998.

[17] The Augusta affair led to the resignation of Willy Claes from the North Atlantic Treaty Organization.

[18] It is estimated that an airline based in Japan paid an estimated 22.8 million yen between November 1995 and May 1999, ostensibly in the form of plant rental fees, but more likely in exchange for an agreement not to disrupt the airline shareholders meetings, a practice by corporate extortionist groups in Japan known as the *sokaiya*. For more information, see H. Katoh, "The actual situation and suggested countermeasure for the control of the corruption in the economic world in Japan: concerning the cozy relationship between politicians, financiers and organized crime groups (*Boryokudans*)", paper presented at the Milan Conference.

[19] William S. Laufer, statement made at the Milan Conference.

[20] Fiona Marcq, "The business world and corruption", paper present at the Milan Conference.

[21] While the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is a milestone in efforts to combat bribery and corruption in international commerce, it is limited to addressing the supply side of corruption of public officials. Under its provisions, public officials who accept bribes must be dealt with according to the domestic criminal laws of the country of the foreign public official.

[22] P. C. Van Duyne, "Corruption: acts and attitudes", *Five Issues in European Criminal Justice: Corruption, Women in the Criminal Justice System, Criminal Policy Indicators, Community Crime Prevention, and Computer Crime*, Matti Joutsen, ed. (Helsinki, European Institute for Crime Prevention and Control, affiliated with the United Nations, 1999).

[23] Note once again that the draft Convention is aimed at corrupt activities directed towards international officials.

[24] Alberto Bradanini, "Corruption: the international experience and activities", paper presented at the Milan Conference.

[25] For further details on each organization, see J. T. Quah, "Controlling corruption in city-states: a comparative study of Hong Kong and Singapore", *Crime, Law and Social Change*, vol. 22, No. 4 (1995), pp. 391-414; M. Bersten, "Investigations by the New South Wales Independent Commission against Corruption: the law, procedures, practices and judicial review," *Current Issues in Criminal Justice*, vol. 3, No. 1 (1991); and A. N. Lai, op. cit., p. 2.

[26] See *International Review of Criminal Policy*, Nos. 41 and 42, 1993 (United Nations publication, Sales No. E.93.IV.4).

[27] C. W. Gray and D. Kaufmann, "Corruption ...", p. 3.

[28] Ibid., p. 4.

[29] Dimitar Abadjiev, "Achievements and difficulties in combating organized crime: the Bulgarian experience", paper presented at the Milan Conference, p. 1.

[30] Rafael Ordúz Medina,"Achievements and difficulties encountered: the Colombian experience", paper presented at the Milan Conference, p. 4.

[31] Jong-Bum Kim, "Korean implementation of the OECD Bribery Convention: implications for global efforts to fight corruption", paper presented at the Milan Conference, p. 23.

[32] H. Shinkai, ed. "Combating corruption in central and eastern Europe", UNICRI *Issues and Reports*, No. 10, 1997.

[33] The United Nations Survey of Crime Trends and Operations of Criminal Justice Systems is based on official criminal justice statistics on bribery provided by Member States. The latest data available refer to 1994.

[34] The International Crime Victim Survey is coordinated by an international working group, including UNICRI, the Home Office of the United Kingdom and the University of Leiden, The Netherlands. Its database contains more than 135,000 cases from household interviews in 60 countries. The Survey has already been carried out three times (1989, 1992-1994 and 1996-1997) and will be repeated for a fourth time in 2000.

[35] In some areas there is a problem of corruption among government or public officials. In answering the question, "During [last year] has any government official, for instance a customs officer, police officer or inspector in your country, asked you or expected you to pay a bribe for his service?"; respondents were asked to identify the category of public official and whether a report was made to a public or private agency.

[36] A. Ruzindana, Petter Langseth and A. Gakwandi, eds., *Fighting Corruption in Uganda: The Process of Building a National Integrity System* (Kampala, Fountain, 1998).

[37] Transparency International, a non-governmental organization based in Germany that monitors corruption in each country, has made quite a unique effort in this area. Apart from establishing national chapters and monitoring individual cases of corruption, publishes an annual ranking of countries according to "perceived cleanness" by business persons (the corruption perceptions index).

[38] See Johann Graf Lambsdorff, "The Transparency International corruption perceptions index 1999: framework document", paper presented at the Milan Conference. The 1999 corruption perceptions index includes data from the following sources: Freedom House Nations in Transit, Gallup International, the Economist Intelligence Unit, the Institute for Management Development, Lausanne, the International Crime Victim Survey, the Political and Economic Risk Consultancy, Hong Kong SAR, *The Wall Street Journal*, the *Central European Economic Review*, the World Bank and the University of Basel, and the World Economic Forum.

[39] The Seminar on Anti-Corruption Strategies for Central and Eastern European Countries, held at the International Law Enforcement Academy in Budapest in April 1997, in which 42 international experts and representatives from the police and public prosecution of Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Hungary, Poland, Romania, the Russian Federation and Ukraine took part. The results of the analysis, based on information prepared for and discussed during the Seminar, are presented in H. Shinkai, ed., "Combating corruption ...".

[40] See "Conclusions and recommendations of the ADB/OECD Workshop on Combating Corruption in Asia/Pacific Economies", p. 3.

[41] Richard Nzerem, "Commonwealth action ...", p. 7.

[42] See the reports of the Secretary-General on United Nations standards and norms in the field of crime prevention and criminal justice (E/CN.15/1996/16) and on the use and application of the Code of Conduct for Law Enforcement Officials, together with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (E/CN.15/1996/16/Add.2).

[43] Y. Grau, "The role of the European Commission in the fight against corruption", paper presented at the Milan Conference, p. 3.

[44] Bart W. Édes, "Promoting integrity in the public sector: the contribution of the OECD", paper presented at the Milan Conference, p. 2.

[45] M. L. Salazar, "The Council of Europe Criminal Law Convention on Corruption", paper presented at the Milan Conference, p. 4.

[32] H. Shinkai, ed. "Combating corruption in central and eastern Europe", UNICRI *Issues and Reports*, No. 10, 1997.

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[45] M. L. Salazar, "The Council of Europe Criminal Law Convention on Corruption", paper presented at the Milan Conference, p. 4.

[46] Petter Langseth and Jeremy Pope, "Building integrity to fight corruption: learning by doing", paper presented at the Human Resources in Development Seminar, held at the University of Manchester, United Kingdom, June 1999.

[47] Y. Grau, "The role of the European Commission ...", p. 5.

[48] Bart W. Ėdes, "Promoting integrity ...", p. 13

[49] Vito Tanzi, "Transparency, governance and the role of the IMF", paper presented at the Milan Conference, p. 3.

[50] In September 1997, Transparency International organized in Lima the 8th International Anti-Corruption Conference, which produced the Lima Declaration. The document represents a first attempt of the international community to articulate a broad strategy for combating corruption, at the international and national levels, involving in all sectors of civil society. The 9th International Anti-Corruption Conference was held in Durban, South Africa, in October 1999, with the theme, "Global Integrity: 2000 and Beyond". It produced the Durban Commitment, which builds on the Lima Declaration, assesses the progress made and identifies a number of courses of action to which the 1,600 participants committed themselves. The 10th International Anti-Corruption Conference will take place in Prague in 2001.

[51] Raymond E. Kendall, "The international experiences and activities", paper presented at the Milan Conference, p. 11.